

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH LESTER JOHNSON,

Petitioner,

v.

CASE NO. 15-14233

HONORABLE ARTHUR J. TARNOW

THOMAS MACKIE,

Respondent.

ORDER

GRANTING PETITIONER'S MOTIONS TO ATTACH EXHIBITS

(ECF Nos. 10 and 11),

DENYING PETITIONER'S MOTION TO ALTER

OR AMEND THE JUDGMENT (ECF No. 9),

AND

GRANTING IN PART AND DENYING IN PART PETITIONER'S

MOTION FOR EMERGENCY REVIEW (ECF No. 12)

I. Introduction

On December 2, 2015, petitioner Joseph Lester Johnson commenced this action by filing a *pro se* habeas corpus petition under 28 U.S.C. § 2254. *See* ECF No. 1. The habeas petition challenged Petitioner's 1985 Wayne County conviction for second-degree murder. *See* Mich. Comp. Laws § 750.317.

Petitioner's sole ground for relief in his habeas petition was that a key prosecution witness in his case (Edith Gibson) committed perjury when she testified against him at his criminal trial. Petitioner alleged that he learned of the perjury in 2013 when he obtained a copy of the transcript from his co-defendant's trial and

discovered that Ms. Gibson testified at his co-defendant's trial that the co-defendant ordered Gibson to remove the deceased victim's pants and empty his pockets.

Petitioner asserted that this testimony contradicted Ms. Gibson's testimony at his trial where she testified that Petitioner ordered her to remove the victim's pants and empty his pockets. Because the prosecutor's theory was that Petitioner's co-defendant shot the victim, but that Petitioner aided and abetted his co-defendant, Petitioner claimed that Ms. Gibson's testimony at his co-defendant's trial was new evidence of his innocence.

On January 14, 2016, the Court summarily dismissed the habeas petition because it was a second or successive petition to a habeas petition that Petitioner filed in 1990¹ and because Petitioner had not received permission from the Court of Appeals to file the petition. *See* ECF No. 3. Petitioner subsequently filed a "Motion for Relation Back Amendment Pursuant to Rule 15(c)." *See* ECF No. 6. Petitioner indicated in his motion that he wanted to have his current claims relate back in time to 1990, when he filed his first habeas petition. The Court denied Petitioner's motion because Petitioner's 1990 habeas case was closed and there was no pending case to

¹ *See Johnson v. Prelesnik*, No. 90-71484 (E.D. Mich. May 29, 1990). The first petition was dismissed on the basis that the claimed error was harmless.

Petitioner also filed a habeas corpus petition in 1995. The second petition was dismissed as an abuse of the writ. *See Johnson v. Pitcher*, No. 95-76196 (E.D. Mich. Feb. 25, 1997).

which Petitioner's arguments could relate back. *See* ECF No. 8. Currently pending before the Court are Petitioner's motion to alter or amend the judgment, Petitioner's motions to attach exhibits, and his motion for emergency review.

II. Analysis

A. The Motions to Attach Exhibits (ECF Nos. 10 and 11)

The Court begins its analysis with Petitioner's motions to attach exhibits to his motion to alter or amend the judgment. The exhibits appear to be: (1) a small portion of the transcript of Edith Gibson's testimony at Petitioner's co-defendant's trial; and (2) an excerpt from Petitioner's second habeas corpus petition. Petitioner alleges that the exhibits will help the Court resolve the question of whether he should be permitted to relate his arguments back to a previous habeas petition.

The Court cannot attach the exhibits to Petitioner's motion to alter or amend the judgment, but the exhibits have been filed as separate documents in this case, and the Court will consider the exhibits when ruling on Petitioner's motion to alter or amend the judgment. The Court therefore grants Petitioner's motions to attach exhibits (ECF Nos. 10 and 11).

B. The Motion to Alter or Amend (ECF No. 9)

Petitioner appears to want the Court to alter or amend its order denying his motion to relate his claims back to one of his previous habeas petitions. Petitioner brings his motion under Federal Rule of Civil Procedure 59(e), which permits a party

to move to alter or amend a judgment within twenty-eight days after entry of the judgment. The Court entered its order denying Petitioner's motion to relate back on June 6, 2016, and Petitioner filed his motion to alter or amend the order on June 22, 2016. Thus, the motion to alter or amend the prior order is timely.

The purpose of a Rule 59(e) motion "is to allow the court to reevaluate the basis for its decision." *Keyes v. Nat'l R. R. Passenger Corp.*, 766 F. Supp. 277, 280 (E.D. Pa. 1991). "A district court may grant a Rule 59(e) motion to alter or amend judgment only if there is: '(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.'" *Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479, 496 (6th Cir. 2006) (quoting *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005)). This standard is consistent with this District's "palpable defect" standard in its Local Rules. *Id.*

Under Local Rule 7.1, the Court generally

will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.

L.R. 7.1(h)(3) (E.D. Mich. July 1, 2013).

Petitioner has not shown that the Court committed a palpable defect or a clear error of law when it denied his motion for relation back of his claims. He also has not

produced any newly-discovered evidence or cited an intervening change in the law since the Court denied his motion for relation back.

Although Petitioner does allege that he is the victim of a fundamental miscarriage of justice and is actually innocent of second-degree murder, he is merely rehashing a claim that he raised in his habeas petition and in his motion to relate back. Furthermore, according to one of Petitioner's exhibits, Ms. Gibson testified at Petitioner's co-defendant's trial that both Petitioner and his co-defendant ordered her to empty the victim's pockets. Ms. Gibson also testified that both men took the drugs and money which were in the victim's pants pockets and that Petitioner suggested shooting the victim a second time. *See* Mot. to Attach Exhibits, ECF No. 11, Pg ID 525-27.

The Court concludes that Petitioner has not established a credible claim of actual innocence. Therefore, it is not necessary to alter or amend the Court's previous order to prevent manifest injustice. Accordingly, the motion to alter or amend the judgment (ECF No. 9) is denied.

C. The Motion for Emergency Review (ECF No. 12)

In his fourth and final motion, Petitioner seeks to have the Court review his case immediately and to release him on bond pending a decision on whether his claim of false testimony relates back to his prior habeas petition. Petitioner's motion is granted in part and denied in part. The request for immediate review of this case is

granted, but the request for release on bond is denied because Petitioner has not raised a “substantial question,” and he has not demonstrated that some circumstance makes his case “exceptional and deserving of special treatment in the interests of justice.” *Aronson v. May*, 85 S. Ct. 3, 5 (1964).

III. Conclusion

For the reasons given above, the Court rules as follows:

- the motion to alter or amend the judgment (ECF No. 9) is denied;
- the motions to attach exhibits (ECF Nos. 10 and 11) are granted;
- the motion for emergency review (ECF No. 12) is granted in part and denied in part. The request for immediate consideration of Petitioner’s case is granted, but the request for release on bond is denied.

s/Arthur J. Tarnow
ARTHUR J. TARNOW
SENIOR UNITED STATES DISTRICT JUDGE

Dated: July 21, 2016